

TITLE 114
LEGISLATIVE RULES
INSURANCE COMMISSIONER

SERIES 11
DISCLOSURE AND DECEPTIVE PRACTICES IN THE
ADVERTISEMENT, SOLICITATION AND SALE OF LIFE INSURANCE

§114-11-1. General.

1.1. Scope. -- The purpose of this regulation is to assure that the interests of prospective purchasers of life insurance will be safeguarded by providing such persons with clear and unambiguous statements, explanations and written proposals concerning the life insurance contracts offered to them. This purpose can best be achieved by requiring disclosure of certain basic information pertinent to the life insurance contract, and specifying those acts and practices which are deceptive, or misleading or misrepresent the terms of the contract.

1.2. Authority. -- W. Va. Code §33-2-10 and §33-11-6

1.3. Filing Date. -- March 22, 1974

1.4. Effective Date. -- April 22, 1974

§114-11-2. Applicability.

(a) This regulation shall apply to any advertisement and any solicitation, negotiation or procurement of life insurance occurring within this State and shall apply to any insurer of life insurance contracts. This regulation shall not apply to individual life insurance wherein the face amount is one thousand dollars (\$1000) or less, nor to credit life insurance or group life insurance.

(b) Every insurer shall establish and at all times maintain a system of control over the content, form and method of dissemination, of all advertisements of its policies. All such advertisements, regardless of by whom written, created, designed or presented, shall be the responsibility of the insurer whose policies are so advertised.

§114-11-3. Definitions.

3.1. Advertisement. -- An advertisement for the purpose of this regulation shall include:

(a) Printed and published material, audio-visual material and descriptive literature of an insurer used in direct mail, newspapers, magazines, radio scripts, television scripts, billboard and similar displays;

(b) Descriptive literature and sales aids of all kinds issued by an insurer, agent or broker for presentation to members of the insurance buying public, including, but not limited to, circulars, leaflets, booklets, depictions, illustrations and form letters; and

(c) Prepared sales talks, presentations and material for use by agents, brokers and solicitors.

§114-11-4. Content Of Advertisements Generally.

4.1. Deception by omission prohibited. -- No advertisement shall omit information or use words, phrases, statements, references or illustrations if such omission or such use has the capacity, tendency or effect of misleading or deceiving purchasers or prospective purchasers as to the nature or extent of any policy or contract benefit payable, loss covered or premium payable.

4.2. Comparisons. -- Advertisements shall not directly or indirectly make unfair or incomplete comparisons of policies or contracts or benefits, nor make comparisons of noncomparable policies or contracts, and shall not disparage competitors, their policies or contracts, services or business methods and shall not disparage or unfairly or inaccurately minimize competing methods of marketing insurance.

4.3. Statements about insurers - Recommendations generally. -- An advertisement shall not contain statements which are untrue in fact, or by implication misleading, with respect to the assets, corporate structure, financial standing, age or relative position of an insurer in the insurance business, and shall not contain a recommendation by any commercial rating system unless it clearly indicates the purpose of the recommendation and the limitation of the scope and extent of the recommendation. An advertisement shall not imply that a holding company or subsidiary of an insurer is a separate entity and responsible for the financial condition or contractual obligation of the insurer, unless such is the fact.

4.4. Deceptive terminology prohibited. -- An advertisement shall not contain words or phrases, the meaning of which is clear only by implication or by familiarity with insurance terminology. Such words or phrases shall not be used without an appropriate definition or explanation of the meaning of such words or phrases.

§114-11-5. Basic Requirements.

5.1. Disclosure required. -- In connection with the selling of life insurance:

(a) An agent shall inform the prospective purchaser that he is acting as a life insurance agent and inform the prospective purchaser of the full name of the insurance company for which he is a licensed life insurance agent. Where no agent is involved, an insurer shall inform the prospective purchaser of its full name.

(b) Either the agent or insurer, as appropriate, shall provide to a prospective purchaser, prior to or in connection with the delivery of a contract, a written proposal describing the elements of the contract including, but not limited to:

(1) The name and signature of the insurance agent or if no agent is involved the name of the employee of the insurer who assumes responsibility for the proposal;

(2) The full name of the insurer in which the life insurance is to be written;

(3) The name of the policy or contract and any supplemental rider;

(4) Disclosure of any provision in the policy which will reduce the death benefit while the policy is being maintained in force on a premium paying basis, other than a reduction as the result of a suicide provision, and any reduction resulting from a policy loan or similar provision;

(5) The premiums for the life insurance shown separately from the premiums for each additional supplemental benefit provided in the contract;

(6) The face amount of the life insurance shown separately from the amounts of coverage for any additional or supplemental benefit provided in the contract; and

(7) All matters pertaining to life insurance set forth separately from any matter not pertaining to life insurance.

(c) The written proposal required by this section may be presented in any one of the following forms as appropriate:

(1) A separate written presentation;

(2) The policy specifications page; or

(3) Included in the solicitation material advertising the policy.

(d) All information required to be disclosed shall be set forth prominently in an uninterrupted sequence in one (1) location of either the separate written proposal, the specifications page or the advertising material. No other material shall be interspersed between any of the items required to be disclosed by this section.

§114-11-6. Prohibited Deceptive Acts.

6.1. Generally. -- The following are defined to be unfair acts or deceptive acts in the selling of life insurance subject to this regulation:

(a) The making of any misrepresentation or false, deceptive or misleading statement;

(b) The use of terms such as "Estate Planner," "Financial Analyst," "Investment Adviser," "Financial Consultant," "Consultant," "Financial Counseling," or "Securities Adviser," or any derivation of such words or phrases, to imply that the life agent is generally engaged in an advisory business in which compensation is unrelated to sales, unless such is actually true;

(c) The use of comparisons or analogies or the manipulation of amounts and numbers in such a way as to mislead the prospective purchaser concerning:

(1) The cost of the insurance protection to be provided by the insurance contract; or

(2) Any other significant aspect of the contract.

(d) The use of any system or presentation for comparing the cost of life insurance which does not recognize the time value of money. The average net cost method does not take into account the time value of money and its use for comparative purposes is prohibited;

(e) The reference to an insurance premium as a deposit, an investment, a savings or the use of other phrases of similar import when referring to an insurance premium;

(f) In respect to participating policies, a description of the policy dividend as other than a refund or return of part of the premium paid, which is not guaranteed and which is dependent on the investment earnings, mortality experience and expense experience of the insurer; or

(g) Recommending to a prospective purchaser the purchase or replacement of any life insurance policy or annuity contract without reasonable grounds to believe that the recommendation is suitable for the applicant on the basis of information furnished by such person after such reasonable inquiry as may be necessary under the circumstances concerning the insurance and annuity needs and means of the prospective purchaser.

NOTE: (1) Where the purchase of such insurance is recommended by an agent, a written statement signed by the applicant subsequent to the presentation of the written proposal required by Section 4 of this regulation, confirming the applicant's opinion that after a review of his insurance needs and means, he believes the insurance applied for is suitable for him, shall be deemed to satisfy the requirement of this subsection.

(2) Where the purchase of such insurance is recommended through a direct response solicitation, a written statement signed by the applicant subsequent to the presentation of the written proposal required by Section 4 of the regulation, confirming the applicant's opinion that after a review of his insurance needs and means, he believes the insurance applied for is suitable for him, shall be deemed to satisfy the requirement of this subsection.

§114-11-7. Special Enforcement Procedures.

7.1. Filing of advertisements. -- The Commissioner in his discretion may require that an insurer file with this Department advertising materials for review prior to use. When so required, such advertising material must be filed not less than a reasonable time to be specified by the Commissioner prior to the date the insurer desires to use the advertisement in West Virginia.

§114-11-8. Separability.

8.1. Partial invalidity. -- If any provision of this regulation shall be held invalid, the remainder of the regulation shall not be affected thereby.

§114-11-9. Violations.

9.1. Penalties. -- Any insurer failing to comply with the requirements of this regulation shall be subject to such penalties as may be appropriate under the laws of West Virginia.